

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

RECEIVED
FEDERAL ELECTION
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

2013 APR 12 AM 9: 43

2013 APR 11 PM 4: 56

In the matter of

MUR 6531

Obama-Biden 2012
Exodo 80, Inc.
Miguel Figueroa, a/k/a
Miguel Figueroa Olivera

CELA

SENSITIVE

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

(1) Take no further action as to Obama-Biden 2012; Exodo 80, Inc; and Miguel Figueroa;
and (2) close the file.

II. INTRODUCTION

The Federal Election Commission ("Commission") previously found reason to believe that Obama-Biden 2012 ("OB2012"), an unincorporated nonprofit organization totally unaffiliated with President Obama, Vice President Biden, or Obama for America ("OFA"); Exodo 80, Inc. ("Exodo 80"), a local nonprofit corporation that sponsored OB2012; and Miguel Figueroa, the president and registered agent of Exodo 80 (collectively, "Respondents") violated 2 U.S.C. § 441h(b) by representing that OB2012 was acting on behalf of OFA to solicit contributions and 2 U.S.C. § 441d(a) by failing to include a proper disclaimer on a direct mail piece soliciting these contributions. See Certification (July 2, 2012); First Gen. Counsel's Rpt. at 2 ("First GCR"). The Commission also authorized an investigation to determine whether Respondents intended to misrepresent themselves as acting on behalf of OFA. First GCR at 8.

13044342950

1 We interviewed Figueroa twice over the phone, using employees from the Office of the
2 General Counsel ("OGC") to translate between English and Spanish. We obtained relevant
3 documents from Figueroa prior to the interviews. *See* First GCR at 5; *see also* Supp. Resp.
4 (July 17, 2013); RTB Resp. (Aug. 20, 2013). Based on the lack of substantial evidence
5 suggesting that the Respondents acted with fraudulent intent, the low amount of money involved
6 in the potential violation, and the fact that Respondents have ceased their activity, we
7 recommend that the Commission take no further action and close the file in this matter.

8 III. DISCUSSION

9 A. Background

10 OB2012 is a grassroots organization that is not affiliated with OFA. It created its
11 website, www.obama-biden2012.org, on June 6, 2011, and opened its now-closed bank account
12 in September 2011. *See* <http://whois.net/whois/obama-biden2012.org>; Report of Investigation of
13 Miguel Figueroa at 7 (Feb. 21, 2013) ("Figueroa ROI"). During the 2012 election cycle,
14 OB2012 distributed a direct mail piece asking recipients to "work for Obama-Biden reelection,"
15 and directing them to its website. First GCR at 4. The mail piece provided recipients with a
16 form to make a "tax free contribution," which instructed them to make checks payable to
17 OB2012 or visit its website and click on the "Donate Now" tab. *Id.*

18 Exodo 80 is a non-profit corporation "dedicated to creating organizations that are
19 designed to work for the betterment of life and human life." 2011 Annual Report (June 14,
20 2011), *available at* www.dos.state.fl.us; *see* www.exodo80.com (last visited Mar. 28, 2013).
21 Figueroa is the president and registered agent of Exodo 80. *Id.* Exodo 80's website provides
22 links to the websites of eight other organizations that it "sponsors," one of which is OB2012.

13044342951

1 The OB2012 website prominently features the OFA logo and images of President Obama
2 and Vice President Biden.² First GCR at 3. It also provides examples of the activities
3 undertaken by the organization, such as serving food to the homeless and distributing flyers,
4 bumper stickers, and "souvenirs." *Id.* The "Souvenirs" tab advertises t-shirts, key chains, and
5 coffee mugs featuring the OFA logo and pictures of the then-candidates. *Id.* While the "Donate
6 Now" tab currently states that the organization is no longer accepting donations, as recently as
7 May 2012 it instructed visitors to donate by check made payable to Exodo 80 and, before then,
8 provided a link for visitors to make a donation via Paypal. *Id.*

9 **B. Results of Investigation**

10 Figueroa was cooperative, but generally provided rambling and indirect answers in our
11 interview. He asserts that he did not accept any outside donations, but rather funded OB2012
12 himself. Supp. Resp. at 2; Figueroa ROI at 7, 9. He stated that he sold his business, Aurora
13 Cabinets, for between \$7,000 and \$8,000 and used the proceeds to provide services to the
14 homeless (such as "helping [them] get haircuts"). Figueroa ROI at 8. Although Figueroa stated
15 that he received two donations by check, he claims to have voided and returned both. *Id.* at 7.
16 He asserts that he never received any cash donations, and that the Paypal account linked on the
17 OB2012 website was never operational. *Id.* Figueroa further stated that he had only one bank

² Although OB2012's website was not operational for some time following Respondents' receipt of the Complaint, it appears that Respondents re-launched the website in response to our letter advising them against "destroy[ing]" any materials pertaining to this matter. See First GCR at 4 n.4.

13044342952

1 account — the account for which he had already sent us two statements — and that he never had
2 more than \$250 in the account. *Id.* at 7-8.

3 Respondents' financial information evidences minimal receipts and disbursements. They
4 submitted copies of two voided checks made out to OB2012 totaling \$300 and two bank
5 statements for Exodo 80, Inc. d/b/a Obama-Biden 2012. *Id.* at 5. The first statement, dated
6 November 30, 2011, shows \$100.16 in deposits and no withdrawals. *Id.* The second statement,
7 dated February 29, 2012, shows no deposits and \$87.50 in withdrawals. *Id.* Figueroa asserts that
8 this was the last bank statement before he closed the account. *Id.* He also claims to have
9 received no funds via Paypal. Figueroa ROI at 7, 9.

10 Respondents claim they did not realize it was improper to use the Obama and Biden
11 names and the OFA logo until they were contacted by OFA's counsel. *Id.* at 7, 10; *see infra* p.5.
12 Respondents provided somewhat inconsistent information in response to the Complaint. While
13 they specifically asserted that "our intention was not to make fraudulent acts" and claimed to
14 have returned a \$100 donation, they also suggested that Exodo 80 intended to use any donations
15 made to OB2012 to finance its other programs and submitted what appeared to be a request for
16 donations to pay for a trailer. First GCR at 4-5.

17 Figueroa explained that he believed he was helping the Obama campaign by helping the
18 homeless. *See* Figueroa ROI.⁵ He suggested that Obama would receive the credit for OB2012's

⁵ Figueroa stated his beliefs that "the homeless have a metaphysical link to heaven" and, as a result, there have been no hurricanes in Miami since he began his efforts. Figueroa ROI at 8; *see also* RTB Resp.

1 work.⁶ RTB Resp.; Figueroa ROI at 7, 8. When he received a letter from "the White House"⁷
2 alerting him that his activities were illegal, he claims to have "shut down" the OB2012 website
3 and returned the donations he received. Figueroa ROI at 7, 10. Figueroa stated that he did not
4 understand that soliciting contributions using Obama's name potentially violated the law.⁸ *Id.*
5 at 7. In fact, Figueroa claims to have sent 100 photographs to the White House depicting
6 OB2012 helping the homeless. The organization's website depicts apparent volunteers wearing
7 OB2012 t-shirts while serving food and handing out clothes. *Id.* at 9; *see also* [www.obama-](http://www.obama-biden2012.org/clubs.htm)
8 biden2012.org/clubs.htm.

9 Figueroa previously took responsibility for the direct mail piece, *see* First GCR at 4, and
10 explained during the interview that seven to eight people assisted him by translating the text to
11 English and retrieving recipients' names and addresses from the internet. Figueroa ROI at 9.
12 Figueroa asserted that he only sent the flyers to government employees whose contact
13 information was publicly available, but he is not familiar with the internet and he does not know
14 where this information was found. *Id.* He claims to have sent approximately 1,500 mail pieces.⁹
15 *Id.* Figueroa was reluctant, however, to discuss the cost of the direct mail piece. *Id.* He
16 repeatedly stated that he used his own funds to pay for the flyer, no one gave him money, and he

⁶ Figueroa stated in response to the Commission's reason to believe findings that he is "now supporting Republicans to create balance." RTB Resp.; Figueroa ROI at 7, 8. Figueroa also implied during the interview that he believed he had violated the law by supporting only Democrats and not Republicans. Figueroa ROI at 7. We advised him that the Commission has no interest in who he supports and that it is not a violation of law to support any particular party or candidate over any other. *Id.*

⁷ In referencing "the White House," Figueroa is presumably referring to OFA.

⁸ Figueroa asserted that he is a supporter of President Obama and, by soliciting contributions to OB2012, he intended to raise campaign contributions to help Obama. He further indicated that he "did not know he was potentially committing any crimes and did not intend to commit such a crime." *Id.*

⁹ Figueroa stated that he sent only one packet of campaign contribution flyers through the mail, and that he received the name of the recipients "from an unknown name of a worker at the White House that he obtained off an Internet link."

13044342954

1 was not interested in being reimbursed. *Id.* At one point, Figueroa claimed to have spent
2 \$25,000 to produce the mail piece, but on further questioning was unable to explain the basis for
3 this estimate; the nature of his response suggested he had offered the number simply to advance
4 the interview and that it was not an accurate estimate of his actual cost. *Id.*

5 **C. Recommendations**

6 Figueroa seemed to exhibit a genuine lack of comprehension related to the law and the
7 potential violation. For example, in response to notification of the Commission's reason to
8 believe findings, and after receipt of the Factual & Legal Analysis explaining the violation, he
9 believed he could rectify the situation by "helping Republicans" in the same way that he had
10 "helped" the Obama campaign. *See supra* p. 5 n.6.

11 Beyond simply misunderstanding the application of the law to his conduct, Figueroa's
12 statements and actions suggest that he lacked fraudulent intent. It appears that Figueroa
13 genuinely believed that he could help the Obama campaign by helping the homeless. *See supra*
14 pp. 4-5. This inference is supported by the fact that he and others wore OB2012 t-shirts while
15 providing services to the homeless, and repeatedly sent photographs of this activity to the White
16 House. If so, instead of taking steps to conceal his activity, he affirmatively revealed that
17 activity to the campaign committee that he was allegedly misrepresenting.

18 Furthermore, Figueroa did not actually collect any contributions through OB2012. He
19 returned the two checks that he received, and there is no information that he collected any other
20 donations.

21 Moreover, the organization's bank account is now closed, the website states that it

13044342955

1 is no longer accepting donations (and would likely be inactive but for OGC's clarification letter),
2 and Figueroa has pledged to stop sending letters and to return any future contributions. *See* First
3 GCR at 4.

4 Accordingly, given the Respondents' apparent lack of fraudulent intent, coupled with the
5 facts that they did not accept any contributions and have ceased their activities, we recommend
6 that the Commission take no further action and close the file in this matter.

7 **IV. RECOMMENDATIONS**

- 8
9 1. Take no further action as to Obama-Biden 2012; Exodo 80, Inc; and Miguel
10 Figueroa.
11
12 2. Approve the appropriate letters.
13
14 3. Close the file.
15

16
17
18
19
20 BY:

4/11/2013

21 Date

Anthony Herman
General Counsel


Daniel A. Petalas
Associate General Counsel


Mark D. Shonkwiler
Assistant General Counsel


Margaret Ritzert Howell
Attorney

13044342956